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No. 82-401

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

BAXTER RICE, INDIVIDUALLY AND AS DIRECTOR OF THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF THE STATE OF CALIFORNIA,

PETITIONER,

V.

EVA REHNER,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 31, 1982.
CERTIORARI GRANTED NOVEMBER 1, 1982.

JOINT APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DOCKET ENTRIES

Eva Rehner v. Baxter Rice
Civil No. 77-0109-N

Date	NR.	Proceedings
2-10-77	1	Fld comptl for declaratory judgment, mandatory injunction & Prelim, injunction. JS-2
		* * * * * * * * * *
2-23-77	3	Fld deft acknowledgment & admission of serv of summons & complt on 2-16-77.
3-7-77	4	Fld deft notice of mot & mot to dismiss or in alternative mot for S/J & P/A in support set 3-21-77 @ 10:30am t/w affid of serv.
3-10-77	5	Fld pltfs memo of P/A in Oppo to defts mot to dismiss t/w affid of serv.

* * * * * * * * * *

3-21-77	8	Fld pltf First Amended Complt for declaratory judgment, mandatory injunction & preliminary injunction. t/w affid of serv.
3-21-77	9	Ent ord hrg mot to dismiss or in alternative for S/J; mot to dismiss Granted w/o leave to amend deft to prepare order. (N)

* * * * * * * * * *

5-11-77	12	Fld deft judgment that complt for declaratory judgment, Mandatory Injunction & Prelim Injunction is dismissed. (N) (Ent 5-11-77) JS-6 mld cys.
5-18-77	13	Fld pltf Second Amended Findings of Fact & Conclusion of Law. (N)

5-23-77	14	Fld pltf notice of mot & mot to vacate judgment or in alternative mot for rehearing & reconsideration of mot to dismiss for failure to claim set for 7-11-77 @ 10:30 am. t/w P/A in suppt & affid of serv.
6-10-77	15	Fld pltfs Notice of Appeal from judgment ent. 5-11-77.
6-23-77	16	Fld Pltfs designation of record on appeal.
		* * * * * * * * * *
7-6-77	18	Fld Defts opposition to first amended motion to vacate judgment or, in the alternative, motion for rehearing and reconsideration of motion to dismiss for failure to state a claim, or, in the

alternative, motion to alter or amend judgment, and points and authorities in support thereof.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EVA REHNER, Plaintiff, v. BAXTER RICE, Individually and as Director of the Department of Alcoholic Beverage Control of the State of California, Defendant.	No. 77-0109-N FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT, MANDATORY INJUNCTION, and PRELIMINARY INJUNCTION

NATURE OF THE CASE

1. By this action an individual Indian residing on the Pala Indian Reservation in San Diego County, California seeks

a declaration by this Court that she need not comply with the licensing requirements of the California Alcoholic Beverage Control Act (Bus. & Prof. Code §23000 et seq.) in order to sell distilled spirits at her general store on the Pala Indian Reservation. To effectuate this declaration, she also seeks the appropriate injunctive relief.

JURISDICTION

2. This action arises under the following federal statutes: 18 U.S.C. §§1154, 1156, 1161, and 1162, 28 U.S.C. §1360, and 42 U.S.C. §1983; the following federal regulation: 25 C.F.R. §251; the Supremacy Clause of the United States Constitution (Article VI, Paragraph 2); and the Indian Commerce Clause of the United States Constitution (Article I, Section 8, Clause 3).

3. This Court has jurisdiction of this matter under 28 U.S.C. §1331, 1337, 1343, 2201, and 2202; and 42 U.S.C. §1983.

4. The value of the amount in controversy herein exceeds the sum of $10,000, exclusive of interest and costs, in that the value to plaintiff of her business, the sole source of employment and support for herself and her husband, is more than $10,000. Also, the current price on the open market of a general off-sale license, issued by the California Department of Alcoholic Beverage Control, to engage in the sale of distilled spirits is approximately $55,000.

PARTIES

5. Mrs. Eva Rehner, a federally licensed Indian trader, is a member of the Pala Band of Mission Indians. She is the owner and operator of a general store on the Pala Reservation in San Diego County,

California and resides on said reservation in said county.

6. Mr. Baxter Rice is the Director of the Department of Alcoholic Beverage Control of the State of California. The purpose of this department is to provide a governmental organization to insure the uniform administration and enforcement of the liquor laws of California pursuant to the Alcoholic Beverage Control Act, Bus. & Prof. Code §23000 et seq.

GENERAL ALLEGATIONS

7. Mrs. Eva Rehner wishes to sell distilled spirits at her store on the Pala Indian Reservation in San Diego County. She has been informed by the Defendant, Mr. Baxter Rice, through his employee, Mr. Leslie L. Case, that the Department of Alcoholic Beverage Control will require Mrs. Rehner to obtain an off-sale general

license from the Defendant in order to sell distilled spirits at her store.

8. Mrs. Eva Rehner is indigent and cannot afford such a license. On the open market, such licenses are currently being sold for approximately $55,000 each. At certain intervals, the California Department of Alcoholic Beverage Control has issued such licenses for a lesser sum, but those licenses were issued by a lottery system only to those few persons fortunate enough to have their names drawn at random in the lottery.

9. The Defendant, Mr. Baxter Rice, has no power and lacks jurisdiction to require Mrs. Rehner to obtain such a license to engage in the sale of distilled spirits at her store on the Pala Indian Reservation in San Diego County, California.

10. A genuine and actual controversy exists between Mrs. Rehner and

the Defendant, Mr. Baxter Rice, concerning whether the Defendant may require Mrs. Rehner to obtain a general off-sale license from Defendant in order to engage in the sale of distilled spirits at her store on the Pala Indian Reservation in San Diego County, California, in that Mrs. Rehner, through her attorneys, has requested Defendant to exempt her from the operation of the California Alcoholic Beverage Control Act (Bus. & Prof. Code §23000, et seq.), which purports to require all persons, including an Indian who is a licensed Indian trader on an Indian Reservation, to obtain such a license, and that Defendant, through his employee and agent Mr. Case, has refused to grant her an exemption.

11. Plaintiff, Eva Rehner, is informed and believes and on such information alleges that the Defendant, his

employees, successors in office, agents, subordinates and representatives in the Department of Alcoholic Beverage Control have prepared an do maintain a list of all persons and/or establishments in California, or specified parts thereof, to whom or to which wholesalers of distilled spirits may lawfully sell supplies of such distilled spirits. The name of Eva Rehner does not appear on said list.

12. Because of increasing local competition, Mrs. Rehner's business has been and is being irreparably and immediately injured and will continue to suffer great and irreparable economic detriment unless Mrs. Rehner may engage in the sale of distilled spirits at her store on the Pala Indian Reservation without obtaining such a license or other evidence of compliance with the California Alcoholic Beverage Control Act.

WHEREFORE, Mrs. Eva Rehner prays for the following relief:

1. That the Court declare that Mrs. Rehner may engage in the sale of distilled spirits at her store on the Pala Indian Reservation without obtaining a license or other evidence of compliance with the California Alcoholic Beverage Control Act (Bus. & Prof. Code §23000 et seq.) from the Defendant. Also, that the Court declare Mrs. Rehner may purchase supplies of distilled spirits for sale at her store on the Pala Indian Reservation from wholesalers of such merchandise without displaying or otherwise providing such a license or other evidence of such compliance, and that wholesalers of distilled spirits may sell such merchandise to Mrs. Rehner for sale at her sotre on the Pala Indian Reservation without requiring her to exhibit or display to them any

license or other evidence of her compliance with the California Alcoholic Beverage Control Act (Bus. & Prof. Code §23000 et seq.) issued by Defendant.

2. That the Court issue a permanent mandatory injunction ordering and directing that the Defendant, his employees, successors in office, agents, subordinates, and representatives place the name of Eva Rehner on whatever list or lists or other document or other documents which he and/or they have maintained and/or do maintain listing the names or other identifying identifying designations of these persons and/or establishments in California, or specified portions thereof, which or who may lawfully purchase supplies of distilled spirits from wholesalers for resale at retail to the public or portions thereof in California.

3. That Defendant, Baxter Rice, his employees, successors in office, agents, subordinates, and representatives be preliminarily enjoined from requiring the plaintiff, Eva Rehner from obtaining a California off-sale general license or any other evidence of her compliance with the California Alcoholic Beverage Control Act (Bus. & Prof. Code §23000 et seq.) in order to sell distilled spirits at her store on the Pala Indian Reservation or to purchase such distilled spirits from wholesalers for sale by her at her store on the Pala Indian Reservation.

DATED: March 21, 1977.

Respectfully submitted,

CALIFORNIA INDIAN LEGAL SERVICES

By /s/ PAMELA L. ALDRIDGE
PAMELA L. ALDRIDGE
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Title Omitted In Printing]

ACKNOWLEDGEMENT AND ADMISSION OF SERVICE OF SUMMONS AND COMPLAINT

I, BAXTER RICE, the Director of the Department of Alcoholic Beverage Control of the State of California, the defendant in the above entitled action, hereby acknowledge and admit that service of the summons and complaint in this action was made upon me at my place of business at 1215 "O" Street, Room A-443, Sacramento, California, 95814, by delivery to me of a copy of the summons and complaint through the United States mail on February 16, 1977.

Dated: February 16, 1977

/s/ C. E. CAMERON, JR., CHIEF
COUNSEL DEPARTMENT OF
ALCOHOLIC BEVERAGE CONROL
BAXTER RICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Title Omitted In Printing]

NOTICE OF MOTION AND MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT AND POINTS AND AUTHORITIES IN SUPPORT THEREOF

TO: EVA REHNER, PLAINTIFF HEREIN, AND HER ATTORNEY ART BUNCE, ESQ.

PLEASE TAKE NOTICE, that on Monday, March 21, 1977, at 10:30 A.M., or as soon thereafter as counsel may be heard in the above-entitled court, in the Courtroom of the Honorable Leland C. Nielsen, United States District Judge, at the United States District Courthouse, located at 940 Front Street, San Diego, California, defendant Baxter Rice, Director, Department of Alcoholic Beverage Control, State of California, will move said Court as Court as follows:

To dismiss the action as to this moving defendant because the Complaint

fails to state a claim against said defendant upon which relief can be granted, and because this moving defendant is entitled to a judgment as a matter of law.

This motion will be made and based upon this Notice of Motion, and Motion, the Points and Authorities attached hereto, the accompanying exhibits, and all files, records, and pleadings in the above-entitled matter.

DATED: March 3, 1977

EVELLE J. YOUNGER,
Attorney General

By /s/WILLIAM R. WINSHIP
WILLIAM R. WINSHIP, JR.
Deputy Attorney General

Attorneys for Defendant

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Attorneys for Defendant

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EVA REHNER, Plaintiff, vs. BAXTER RICE, individually and as Director of the Department of Alcoholic Beverage Control of the State of California, Defendant.	Civil Case No. 77-0109-N JUDGMENT

Defendant's motion to dismiss in the above matter having come on for hearing on March 21, 1977, before the Honorable Leland C. Nielsen, Judge Presiding of the above entitled Court, plaintiff appearing

by her counsel, Pamela L. Aldridge, Esq., defendant appearing by its counsel, Evelle J. Younger, Attorney General of the State of California by William R. Winship, Jr., Deputy Attorney General, the Court having read all the papers on file in the action, the matter having been orally argued and submitted, the Court having given notice to all parties of its intended decision at the time of the aforementioned hearing and written findings of fact and conclusions of law having been filed with the Court and the Court being fully informed in the action, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

The Complaint for Declaratory Judgment, Mandatory Injunction and

Preliminary Injunction is dismissed.

DATED: 5-10-77

/s/LELAND C. NIELSON
LELAND C. NIELSEN, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EVA REHNER, Plaintiff, vs. BAXTER RICE, Individually and as Director of the Department of Alcoholic Beverage Control of the State of California, Defendant.	Civil Case No. 77-0109-N SECOND AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I

JURISDICTIONAL FACTS

1. Plaintiff, a federally licensed Indian trader, is a member of the

Pala Band of Mission Indians. Plaintiff is the owner and operator of a general store on the Pala Indian Reservation, a federal Indian reservation, located in San Diego County, California.

2. Defendant is the Director of the Department of Alcoholic Beverage Control of the State of California.

3. Plaintiff desires to sell distilled spirits at her general store on the Pala Indian Reservation without first obtaining a general license to do so from defendant.

4. Defendant has refused plantiff's request to sell distilled spirits at her general store on the Pala Indian Reservation unless and until plaintiff obtains a general license from defendant to do so. (California Business and Professions Code sections 23000 et seq.).

6. By her lawsuit, plaintiff contends defendant has no power and lacks jurisdiction to require plaintiff to obtain a general license to engage in the sale of distilled spirits at her general store located on the Pala Indian Reservation.

II

CONCLUSION OF LAW

1. Generally, the sale of alcoholic beverages upon a federal Indian reservation is a violation of law (Title 18, U.S.C.A. section 1154).

2. However, an exception to the general prohibition against the sale of alcoholic beverages upon a federal Indian reservation exists where a tribe, having jurisdiction over such area, duly adopts an ordinance providing the sales of alcoholic beverages will conform with the laws of the state in which the sales of alcoholic beverages occur. Such ordinance must be

certified by the Secretary of the Interior and published in the Federal Register. (Title 18, U.S.C.A. section 1161).

3. On or about August 13, 1959, the Pala Band of Mission Indians, the tribe having jurisdiction over the Pala Indian Reservation located in San Diego County, adopted an ordinance providing that the introduction, sale or possession of intoxicating beverages shall be lawful within the Indian country therein, provided that such introduction, sale or possession "is in conformity with the laws of California."

4. On or about April 11, 1960, the above ordinance adopted by the Pala Band of Mission Indians, was certified by the Secretary of Interior.

5. On or about April 16, 1960, the above ordinance, adopted by the Pala Band of Mission Indians, was published in

the Federal Register in accordance with Title 18, U.S.C.A. section 1161.

6. Accordingly, plaintiff may not engage in the sale of distilled spirits at her general store located on the Pala Indian Reservation without first obtaining a general license to do so from defendant in accordance with the laws of the State of California relating to the sale of alcoholic beverages. (California Business and Professions Code sections 23000 et seq.).

Dated: 5-17-77

/s/LELAND C. NIELSEN
LeLand C. Nielsen, Judge
United States District Court
Southern District of California

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

[Title Omitted In Printing]

NOTICE OF MOTION

TO: BAXTER RICE, DEFENDANT HEREIN, AND HIS ATTORNEY WILLIAM WINSHIP, ESQ.

PLEASE TAKE NOTICE, that on Monday, July 11, 1977, at 10:30 A.M., or as soon thereafter as counsel may be heard in the above-entitled court, in the Courtroom of the Honorable Leland C. Nielsen, United States District Judge, at the United States District Courthouse, located at 940 Front Street, San Diego, California, Plaintiff, EVA REHNER, will move this Court as follows:

To vacate its Judgment of May 11, 1977 dismissing Plaintiff's Complaint for Declaratory Relief, Mandatory Injunction and Preliminary Injunction or, in the alternative, will move to rehear and

reconsider defendant's motion to dismiss Plaintiff's Complaint for failure to state a claim.

This motion will be made and based upon this Notice of Motion, and Motion, the Points and Authorities attached hereto, and all pleadings and documents filed in the above-entitled matter, and upon such oral or documentary evidence as may be presented at the hearing of the motion.

Dated: May 23, 1977

/s/PAMELA L. ALDRIDGE
Pamela L. Aldridge
Attorney for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EVA REHNER, Plaintiff,	)	Civil No. 77-109-N
v.	)	O R D E R
BAXTER RICE, Individually and as Director of the Department of Alcoholic Beverage Control of the State of California, Defendant.	)	

On September 12, 1977, plaintiff brought a motion to vacate judgment or in the alternative for rehearing of defendant's motion to dismiss. Defendant's motion to dismiss was previously granted by this Court on May 11, 1977. Plaintiff was represented by Art Bunce, Esquire, of California Indian Legal Services, and Defendant was represented by William Winship, Esquire, Deputy Attorney General for the State of California.

The Court, having considered the briefs and arguments of counsel, and having been advised in the premises, hereby determines that plaintiff's motion to vacate or to reconsider is DENIED.

IT IS SO ORDERED.

Dated: January 16, 1978.

/s/ LELAND C. NIELSEN
LELAND C. NIELSEN,
United States District Judge